

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ANTHONY MAXWELL,

Plaintiff,

Case No. 19-cv-753-pp

v.

NANCY BERRYHILL,

Defendant.

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**ORDER GRANTING MOTION FOR LEAVE TO PROCEED WITHOUT  
PREPAYING THE FILING FEE (DKT. NO. 3)**

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The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that he does not have the ability to pay the filing fee. The plaintiff is not employed or married, and he is responsible for supporting three minor children ranging in age from 4 to 10. Dkt. No. 3 at 1. The only income listed by the plaintiff is \$515 per month of Food Share. Id. at 2. The plaintiff does not own a car or a home, he has no cash on hand or in a bank account, and he does not own any other

property of value. Id. at 3-4. The plaintiff indicates that he has monthly expenses of \$1,505 (\$480-rent, \$250-alimony or court-ordered child support, \$175-credit card payments, and \$600-other household expenses). Id. at 2. The plaintiff states, “I live with my girlfriend who is the mother of the 3 minor children listed []. She pays all of the household expenses beyond the Food Share benefits I contribute to the household.” Id. at 4. The plaintiff does not list his girlfriend’s source of income or how much she contributes each month to the expenses of approximately \$1,000 per month over and above the plaintiff’s \$515 in Food Share. Nevertheless, the plaintiff has demonstrated that he cannot pay the \$350 filing fee and \$50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 Fed. 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner’s final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff’s complaint states that he is disabled and that the conclusions and findings of fact in the defendant’s denial of benefits are not supported by substantial evidence and are contrary to law and regulation. Dkt. No. 1 at 1-2. At this early stage in the case, and based on the information in

the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

Dated in Milwaukee, Wisconsin this 22nd day of May, 2019.

**BY THE COURT:**

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

**HON. PAMELA PEPPER**  
**United States District Judge**